**United States Postal Service *and* Patricia A. Williamson.** Cases 28–CA–16082(P) and 28–CA–16325(P)

April 28, 2003

## DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

On January 23, 2001, Administrative Law Judge James L. Rose issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, answering briefs, and reply briefs. The General Counsel also submitted a motion to strike portions of the Respondent's answering brief, to which the Respondent filed a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order as modified and set forth in full below.[3]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below orders that the Respondent, United States Postal Service, Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requiring employees to apologize for having engaged in protected concerted or union activities.

(b) Threatening employees with reprisals for having engaged in concerted or union activities protected by the Act.

(c) Discriminating against employees, by placing them on administrative leave without pay and by reassigning their work duties, because they engaged in union or other activity protected by the Act or because they filed charges with the Board.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Patricia A. Williamson for any loss of earnings and other benefits she may have suffered as a result of its placing her on emergency leave without pay, in the manner set forth in the remedy section of the judge's decision.

(b) Reassign Williamson to Address Management System duties consistent with her rehabilitation agreement.

(c) Within 14 days from the date of this Order, remove from its records any reference to the Respondent's discriminatory reassignment of Williamson's work duties and to the Respondent's unlawful decision in placing her on emergency leave. Within 3 days thereafter, notify Williamson in writing that this has been done and that these unlawful actions will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payments records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by Region 28, post at its Phoenix, Arizona facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or

[1] We grant the General Counsel's motion to strike. In any event, we note that the Respondent's proffer of material, which is the subject of this motion, relates to evidence that is contained elsewhere in the record.

[2] We find it unnecessary to pass on the General Counsel's exceptions to the judge's recommended dismissal of the allegation that the Respondent unlawfully warned Charging Party Williamson about acquiring "creeping overtime" (discussed in sec. III,B,5 of the judge's decision). A finding of a violation based on this allegation would in any event be cumulative to similar violations found by the judge, which we affirm, and thus would not affect the remedial order.

No exceptions were filed to the judge's finding that the Respondent violated Sec. 8(a)(1) by threatening Williamson with unspecified reprisals if she refused to relinquish her position as shop steward.

[3] We shall modify the judge's recommended Order to conform with our decisions in *Ferguson Electric Co.*, 335 NLRB 142 (2001), and *Indian Hills Care Center*, 321 NLRB 144 (1996), as revised by *Excel Container, Inc.*, 325 NLRB 17 (1997), and to provide for expunction of the discipline imposed on employee Patricia A. Williamson. We shall also substitute a new notice to conform it with the Order and with our decision in *Ishikawa Gasket America*, 337 NLRB 175 (2001).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT require our employees to apologize for having engaged in protected concerted or union activities.

WE WILL NOT threaten our employees with reprisals for having engaged in concerted activity protected by the Act.

WE WILL NOT discriminate against our employees, by placing them on administrative leave without pay and by reassigning their work duties, because they engaged in union or other activity protected by the Act or because they filed charges with the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole, with interest, employee Patricia A. Williamson for any loss of earnings and other benefits she may have suffered as a result of our placing her on emergency leave without pay.

WE WILL reassign Patricia A. Williamson to Address Management System duties consistent with her rehabilitation agreement.

WE WILL remove from our records any reference to our discriminatory reassignment of Williamson's work duties and to our unlawful decision in placing her on emergency leave, and notify Williamson in writing that this has been done and that our unlawful actions will not be used against her in any way.

UNITED STATES POSTAL SERVICE

*Lisa Johnson* and *Sandra Lyons, Esqs.*, for the General Counsel.

*Leigh K. Bonds* and *Kirk Lusty, Esqs.*, of Sandy, Utah, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge. This matter was tried before me at Phoenix, Arizona, on various dates between October 10 and 18, 2000, upon the General Counsel's complaint which alleged generally that the Respondent suspended the Charging Party in violation of Section 8(a)(3) and (4) of the National Labor Relations Act. Other actions of the Respondent toward the Charging Party are also alleged violative of the Act.

The Respondent generally denied that it committed any violations of the Act and affirmatively contends that the discipline of the Charging Party was for cause.

Upon the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I make the following findings of fact, conclusions of law, and recommended Order.

### I. JURISDICTION

The Respondent provides postal service for the United States of America, operating various facilities including the one here involved at 1902 West Union Hills Drive, Phoenix, Arizona (the Sierra Adobe facility). The Board has jurisdiction by virtue of section 1209 of the Postal Service Reform Act. I therefore conclude that the Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

National Association of Letter Carriers, AFL–CIO and its Branch 576 (the Union), are admitted to be, and I find are, labor organizations within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### *A. The Facts*

There is amazingly little disagreement concerning the material facts of this dispute. Patricia Williamson, the Charging Party, has been an employee of the Respondent 23 years and a union steward for 13. At the times material here, she was the most active of the three stewards at the branch and filed the most grievances, since the other two were typically away from the facility carrying letters and she was primarily assigned desk work.

On September 12, 1998, Michelle Gomez became the manager of the Sierra Adobe station. At an early meeting Gomez held with supervisors, former supervisor, Richard Palmer, credibly testified that "she considered the union representatives at Sierra Adobe Station to be radical and she wanted to gain control of the union and their activities." According to Palmer, Gomez also stated that Williamson "was a thorn in her side."

Though unclear the exact precipitating cause, Williamson wrote a scathing analysis of Gomez, and her appointment, which was published in the Union's October 1998 newsletter. Palmer testified, that "when the article came out, she (Gomez) brought it to one of the supervisor's meetings and she said she would keep that in her file. She had a file in her desk drawer and that's where things like that lived until she was going to use them again."

At the time Gomez was appointed station manager, Williamson, had been on limited duty since 1994 as a result of a work-related injury and was assigned to desk work only. Employees who suffer from some kind of disability (apparently work-related, though this is unclear) are allowed to work on limited duty until it is determined that the physical impairment will not further improve and that the disability will be permanent. Then the human resources division attempts to create and find a position for the employee within the physical limitations of the employee's disability, attempting wherever possible, to keep the employee in his or her craft (letter carrier in Williamson's case). Such is referred to as a rehab position.

Thus when Gomez became the station manager, Williamson, had been on limited duty about 4 years, being assigned various desk jobs including address management systems (AMS).

Almost immediately after her appointment, there was a confrontation between Gomez and Williamson concerning whether Williamson could sit at a desk or would have to use a stool. Williamson testified that sitting on a stool was humiliating given her large size. Gomez testified that she got rid of two semitrailer loads of furniture, including desks, because the work floor was too crowded.

Beginning in January 1999, and until she accepted a rehab position, Williamson was assigned AMS full time. Linda Lemoine, a human resources specialist for the Respondent, testified that in April she contacted Gomez to inquire whether Gomez had work available for Williamson in the rehab position Lemoine was drafting. Lemoine testified that initially, the position for Williamson would not involve letter carrying, which would mean that she would have to be removed from her craft. But Williamson obtained a report from her physician to the effect that she could carry letters 2 hours a day (the minimum to be retained in the letter carrier craft). Gomez told Lemoine she would have to "think about it" and a week later told Lemoine that she in fact had work available—specifically in AMS—and would create a 2-hour route for Williamson.

Gomez called Williamson into her office for the purpose of discussing the rehab position, though whether before or after telling Lemoine she had work available for Williamson is unclear. In any event, during this discussion Gomez told Williamson she was doing a good job on AMS and she would continue to work on that. Also during this discussion, Gomez referred to the newsletter article, noting that she had kept it to use against Williamson. And, she told Williamson, allegedly as a condition for getting the rehab contract and by way of apology for the article, to say "uncle." In fact Gomez testified that she "pulled out this article." And she told Williamson to say "uncle," but this was "[j]ust out of a joke." (Although Gomez testified that she decided to keep Williamson at the station because Williamson was doing good work, she also admitted that the Respondent's contract with the Union prohibited transferring a union steward; however, whether Gomez was required to find a job for Williamson to keep her from being transferred is unknown on this record.)

By letter of April 21, 1999, Lemoine offered Williamson a permanent modified duty position based on her permanent disability, which Williamson accepted on April 27, 1999. This position listed certain physical limitations, including intermittent lifting 4 hours a day of 0 to 15 pounds. Apparently Williamson began working then as a rehab employee, primarily doing AMS but also working 2 hours a day in various letter carrier assignments.

In early August 1999, Supervisor Jimmy Ruiz assigned Williamson the job of placing packages in hampers, which Williamson contends exceeded the weight limits of her rehab agreement. There is, however, no evidence that any of the packages weighed in excess of 15 pounds. In fact, the only credible evidence is that the largest package weighed a bit more than 4 pounds. Nevertheless, Williamson testified that her arms were sore as a result of this work, and she had difficulty sleeping that night. The next day she was again assigned this work, which caused her stress for which she sought medical treatment that day and was off work for 5 weeks on "stress leave." This was the subject of a workmen's compensation claim which was denied and at the time of hearing was on appeal.

When she returned on September 14, she learned than another employee had been assigned to the AMS job. Contending that this reassignment was in retaliation for her activity on behalf of the Union (and for having made a complaint with the Occupational Safety and Health Administration in late 1998 concerning which type of carts employees would be required to use), for having filed the charge in Case 28–CA–16082(P), and for having filed a grievance and an EEO complaint.

During the period from October 1998 to the time of the hearing herein, Williamson contends that the Respondent's supervisors conducted 20 to 25 fact finding investigations concerning her and such, argues the General Counsel, amounted to harassment. This is alleged to be violative of the Act however there is evidence of only three, two of which resulted in no discipline. The third, resulting from an incident on February 4, 2000, wherein Williamson lightly pushed fellow employee Non Reilly at a copy machine, is the principal issue in this matter.

### *B. Analysis and Concluding Findings*

#### 1. Unwarranted "fact finding" sessions

It is alleged that on various dates since April 1, 1999, Gomez and Feno "conducted unnecessary 'fact finding' sessions with respect to Williamson." Evidence supporting this allegation is, at best, sketchy. Although unclear in the record, it appears that a "fact finding" occurs when a supervisor believes there may have been some violation of work place policy and gives the employee an opportunity to explain his or her actions. While discipline may ultimately result, the "fact finding" session is not itself discipline or something about which a record is kept in the employee's personal file. This I conclude from the fact that no documentary evidence of "fact findings" involving Williamson was offered into evidence. Indeed, the only evidence

supporting this allegation is Williamson's generalized testimony that she had been the subject of 20 to 25 "fact findings" since the arrival of Gomez.

The three "fact findings" about which there is evidence do not support a conclusion that such were used to interfere with, restrain, or coerce Williamson in the exercise of her Section 7 rights. One involved the pushing incident in February 2000. Although I conclude, infra, that the Respondent acted unlawfully in placing Williamson on unpaid leave, the incident certainly warranted a "fact finding."

The second resulted from a congressional inquiry concerning the fact that mail delivery had been stopped on one of the routes under the responsibility of Supervisor Richard Palmer. Gomez ordered him to conduct a "fact finding" which he did, but he could not determine who was responsible. According to his testimony, Gomez told him the report was unsatisfactory because he had not identified Williamson as the guilty party and to do it again. In total, he did three "fact findings" and his final report was inconclusive. Although Palmer's testimony is some evidence of animosity on the part of Gomez toward Williamson, the "fact finding" itself, even if Williamson not was one of those involved, appears justified.

The third "fact finding" was conducted by Supervisor Scott Steward in December 1999. Present also were supervisor Jimmy Ruiz and steward Chuck Berry. The inquiry involved an allegation that Williamson had signed a change in schedule form 3189 for another employee which was dated on a day Williamson did not work. She explained that this occurred following an agreement with Supervisor Kevin Montano to avoid having to file a grievance and he suggested she make out a new form 3189 which he would approve. The ultimate result of this "fact finding" according to Williamson was "[n]othing." Since there was a document with Williamson's signature and a date she was not at work, it does not seem unreasonable that the Respondent would inquire as to why.

I conclude that the General Counsel did not establish by a preponderance of the credible evidence that the Respondent conducted unnecessary "fact findings" concerning Williamson in violation of Section 8(a)(1) of the Act. Accordingly, I shall recommend that paragraph 6(a) of the consolidated complaint be dismissed.

2. Threat by Gomez

It is alleged that "under threat of adverse employment actions" Gomez required Williamson to apologize for having engaged in protected activity. This relates to the time when Gomez discussed with Williamson the rehab position and letting her stay on AMS. Gomez produced the article Williamson had written and told her to say "uncle."

Unquestionably, Williamson's opinion of management's decision to promote Gomez to station manager, and the management style of Gomez, expressed in a union newsletter was protected activity. Nor does the Respondent argue to the contrary. There is also no question that a reasonable person, when told to say "uncle" would consider that a demand for an apology without which a desirable job assignment would be withdrawn. In fact Gomez had the discretion of whether to find a rehab job for Williamson.

I discount and discredit the assertion by Gomez that having Williamson say "uncle" was as a joke. She had kept the article in her desk and had stated her intention to use it against Williamson. I believe this is exactly what she did and in doing so violated Section 8(a)(1) of the Act.

3. Assigning duties contrary to Williamson's medical restrictions

In paragraph 6(f) of the complaint, as amended, it is alleged that on or about August 2, Ruiz and/or Scott Stewart "assigned Williamson to perform duties in such a manner that was contrary to Williamson's medical restrictions." This is alleged to have occurred when Ruiz required Williamson to "lift over 100 parcels, write the certified numbers for those parcels and place those parcels in hampers in lieu of performing her two hours of carrying duties." (Br. of counsel for the General Counsel.) Williamson told Ruiz that such an assignment was outside her medical restrictions (presumably the 15-pound lifting limit), but he ordered her to do the work in any event.

She testified that she did the work, but she was very sore that night. The next day, Supervisor Scott Stewart told her Ruiz had left instructions that she was again to do the parcels. She told Stewart than she could not. He gave her a direct order to do so, and she went home and then to her doctor. She was out of work until September 14 on "stress leave."

At the time this occurred, Williamson had agreed to the rehab contract, which, among other things, provided "LIFTING: Intermittent (0–15 lb.), 4 hours per day." There is no evidence that Williamson was required to exceed this limitation. The only credible evidence is that the parcels weighed up to 4 pounds. Williamson did not testify that she had to do any lifting more than 4 hours on the day in question.

Williamson may have been sore as a result of doing the work she was assigned; however, the evidence fails to establish that in fact she was assigned duties outside the restrictions of her rehab assignment. Accordingly, I conclude that the allegation in paragraph 6(f) has not been established.

4. Discontinuing Williamson's participation in AMS

AMS is not clearly defined in the record, however, it apparently concerns planning delivery routes for new residences and businesses to be served. And it is principally a desk job which can be assigned to either clerks or letter carriers. AMS is an assigned duty rather than a bid position. Williamson had been doing this work, at least on a part-time basis, for some time when, in April, she was offered and accepted the rehab contract. And Gomez testified that she was satisfied with Williamson's work. Thus Williamson continued to do AMS work into the summer of 1999, but pursuant to the rehab contract she also was assigned letter carrying duties for 2 hours a day.

When Williamson returned from the 5 weeks of "stress leave" she found that the AMS duties had been assigned to another employee. The Respondent's witnesses testified that Williamson said if she could not be the sole AMS person, she would not do the work at all. They also testified that she called the new AMS person names and generally made life unpleasant for her. This is denied by Williamson. While I tend to credit the Respondent's witnesses concerning Williamson's reaction

to her fellow employee, such is really not material to the ultimate issue.

Among other things, Williamson filed an EEO complaint over being denied what she claimed was her right to be assigned AMS duties. The Union and Respondent were parties to some kind of mediation process concerning this which resulted in a "no agreement letter."

Following the mediation, Feno "proposed for me to get my AMS duties back for six hours and that I could only have my route as my position till November 1st, till November 1st, 2001. Another proposal was that I resign from my union steward's position and I could not run again for re-election until as an alternate or a full steward until November 1st 2001." Williamson did not agree to Feno's proposal that she resign as a steward. Feno admitted that he made such a proposal, claiming that doing AMS as a steward was a conflict of interest. I am not persuaded by his argument, especially since she had done the AMS work for many months without there being such an assertion by management.

However, there is serious doubt whether Williamson was in entitled to be the principal AMS employee when she returned to work. AMS work requires some training and some duties must be performed every day, since the area serviced by the Sierra Adobe station is the fastest growing in Phoenix. Therefore, to conclude that Williamson's attendance was not reliable enough for a permanent assignment is not patently unreasonable.

Williamson then filed a Board charge and a grievance concerning this. Thus, when Feno offered to assign Williamson AMS work 6 hours a day in return for her resigning as the steward, the Respondent clearly made a condition for receiving the job that she cease engaging in union and other protected activity. Such negates whatever reasonable justification the Respondent may have had in not reassigning Williamson AMS duties on her return. I conclude that the true motive for not assigning her the AMS duties that she was performing prior to her stress leave was her protected and union activity. The Respondent therefore violated Section 8(a)(3) of the Act.

5. Threat of unspecified reprisals

The complaint alleges that Feno threatened Williamson with unspecified reprisals if she refused to relinquish her steward position, and the General Counsel argues that the above discussion Feno and Williamson had concerning the AMS assignment establishes the allegation. I agree.

Implicit in Feno's offer to return her to AMS duties if she would resign as a steward is the threat that if she did not resign, he would withhold the AMS assignment. Such is a clear threat for engaging in union activity was violative of Section 8(a)(1) as alleged in paragraph 6(d).

It is also alleged that Ruiz threatened Williamson with unspecified reprisals in May relating to "creeping overtime." As explained by Ruiz, overtime is generally approved in advance; however, occasionally an employee will misjudge the time required to do an assignment and clock some extra minutes, which is then approved the next day by the supervisor. This is referred to a "creeping overtime" and Ruiz testified that he counseled all employees about it. He also testified that when an employee is off the clock, that employee should leave the work floor. Thus, when he sees an employee on the floor not working he will ask if that employee is or is not on the clock, and tell an off-the-clock employee to leave the floor.

Although the testimony is a little confusing, it appears that the event alleged began when Ruiz concluded that Williamson had put a grievance in with some for which steward Chuck Berry and Ruiz had agreed waive the time requirement. According to employee David Arnold, Ruiz said, "I'm tired of Patty's chicken shit ways of doing things, slipping this paperwork in." Shortly thereafter Williamson appeared, "And then Jimmy Ruiz came back to Patty and said, 'What are you doing here?' Patty told him, 'I am off the clock', . . . He told her, 'I don't care, I want to address you about creeping overtime.' And she told him, 'I'm off the clock.' And he wouldn't stop, he persisted. 'Well, I'm giving you an official discussion and she said, 'How can you give me an official discussion, I'm off the clock.' This went back and forth. And then he said, 'Well, you can consider this an official discussion.'"

Berry testified that "there was a big flare-up about he (Ruiz) was mad at Patty and he told her that he was going to—the next time that she started creeping on the clock, that there would—he was going to have a fact finding with her, a discussion on that . . . ."

Ruiz did not deny the essence of this testimony; nevertheless, it is difficult to understand that such translates into a threat of unspecified reprisals because Williamson engaged in protected activity. The General Counsel apparently contends that Williamson was not on the clock and therefore was not engaged in "creeping overtime," therefore the reference by Ruiz to such was unlawful. I disagree. Since employees have no right to "creeping overtime" to warn them against doing so would not be violative of the Act. Since Williamson was on the work floor at apparently a time when she would have been on overtime, Ruiz would have been justified in confronting her. Perhaps he was upset about the way he perceived Williamson was handling a grievance, but he was nevertheless justified in asking whether she was on the clock or not.

I conclude that the confrontation here did not amount to a threat of unspecified reprisals against Williamson for engaging in protected activity. Accordingly, I shall recommend that paragraph 6(e) of the complaint as amended, be dismissed.

6. The "emergency leave" and unpaid suspension

On Friday, February 4, Williamson approached Non Reilly at a copy machine, pushed her and said, "What's up woman?" Reilly said, "Nothing much." Then Williamson said, "What, aren't you going to push me back?" Reilly responded, "I'm not that kind of girl."

Though apparently trivial, Reilly was sufficiently concerned, believing that Williamson had attempted to provoke her, that she contacted Mary Lou Pavoggi, her union steward (the American Postal Workers Union), who in turn contacted Renee Breedon, the local union's president. Breedon told Pavoggi to report the incident to management, which she did on Monday, February 7. Additionally, Pavoggi arranged to meet with Williamson and Reilly that day to "hopefully get (the matter) resolved." In her statement to the Respondent's inspector, Reilly

stated that only sometime after the incident did she conclude that Williamson had attempted to provoke her. She also wrote that she and Williamson met on February 7, and "we had a good conversation about it and walked away with good feelings."

Upon learning of the incident, Phillip Feno (apparently second in command at Sierra Adobe station) placed Williamson on "emergency leave" without pay pursuant to article 16.7 of the Union's collective-bargaining agreement with the Respondent; and he initiated a fact finding investigation into the incident. Feno testified that "I didn't follow these guidelines," when determining to place Williamson in 16.7 leave. He made his decision without talking either to Reilly or Williamson, the only two who actually witnessed the incident. When subsequently conducting his "fact finding" (which was independent of the Postal Service investigation) he asked numerous questions of Williamson which had nothing to do with the pushing incident, some of which were focused on her past actions as a union steward.

The record demonstrates a great deal of conflict between Williamson and the Respondent's managers, not all of which is attributable to Williamson's union activity. Nevertheless, Breedon testified that the incident involving Williamson and Reilly contributed to

> the hostile work environment that was being allowed to continue on that work room floor where everybody was edgy and you could see in—and I did conduct an extensive survey on the hostile work environment there, and everybody was so edgy and I think that—and I firmly believe till this day because nothing else has happened after this, this was the culmination of everything that was happening during that time frame out at Sierra Adobe Station.

Breedon attributed much of the hostility to Gomez, Feno, and other managers. Nevertheless, she viewed the Williamson/Reilly incident serious. While she, as president of the Clerk's local union, did not seek to have Williamson "put out" she did think it necessary to have a record of the event in case there would be a repeat occurrence. In short, based on her experience as a union representative and her knowledge of the atmosphere at the Sierra Adobe Station, Breedon viewed the pushing incident serious enough to warrant an investigation by the Respondent.

Breedon was called by the General Counsel, yet in sum her testimony was adverse to the General Counsel's position. Given this, and her generally positive demeanor, I credit Breedon.

I conclude that this event was not as benign as the General Counsel argues or that Williamson suggested in her testimony:

> A. And I was standing there and Non just had her head down. She looked a little depressed because I knew her mom had been ill and it was kind of just like awkward because we were just, you know, both standing there and neither one of us is saying anything. So I reached up and I went like this on her shoulder with my left hand and I said, "What's up, woman." And she said, "Nothing much." She smiled and everything.
>
> Q. And did you say anything after that?
>
> A. Yeah, because there was a pause. There was nothing—there was no interaction between us then all of a sudden.
>
> Q. And what did you say?
>
> A. And I said, "Well aren't you going to push me back," and she said, "No, I'm not."

Asking Reilly if she was "going to push me back" simply makes no sense other than as an invitation to a confrontation. Whether it was or not is less important than Reilly's reasonable conclusion that it was.

Lerene Wiley is the manager of labor relations for the Arizona district. She is on the termination review team (which considers all proposed terminations, though the members may vary depending on where the employee works). She testified that the recommendation of Feno (concurred in by Gomez) to terminate Williamson was not appropriate, as there were not enough details of the incident. And, after conducting further inquiry, she concluded there had been no ongoing threat thus Williamson should not be terminated. However, since the Respondent views any physical contact as serious, it was determined to give Williamson a 2-week suspension, which is the next level of discipline below removal.

Thus I conclude that the incident was not so patently trivial as to imply that discipline of Williamson was a pretext and that the true motive for the Respondent's actions lie elsewhere. Cf., *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966). Although Williamson was a very active steward such does not immunize her from discipline for workplace misfeasance. On the other hand, the Respondent may not lawfully seize upon an incident, such as the one here, to retaliate against one for engaging in activity protected by Section 7 of the Act, such as filing an OSHA complaint, a Board charge, and EEO complaint and grievances.

That, I conclude, is precisely what happened here. I conclude that Feno's decision to place Williamson on emergency unpaid leave resulted from her having filed an EEO complaint, a Board charge, and a grievance in connection with the AMS job. Who is right with regard to the AMS assignment (and the credible testimony tends to support the Respondent) is not the issue. The issue is whether Williamson's activity was protected and whether she was retaliated against because of it.

First is the undeniable hostility of Gomez toward Williamson's union activity, as demonstrated by her keeping the unfavorable article Williamson wrote in the Union's newsletter and subsequently using it "against her," requiring her to say "uncle" before agreeing that she could have a rehab position. That Gomez could have refused to agree to a rehab position for Williamson tends to minimize her hostility toward Williamson. Nevertheless, Williamson's protected and union activity continued to be a perceived problem for management.

Second, at the time Feno put Williamson on emergency leave under section 16.7 there was clearly no emergency. The pushing incident had occurred 3 days previously and there was no evidence of a likely recurrence or escalation. As found by Wiley, there was no ongoing threat. By its terms, section 16.7 provides that an employee may be placed in an off-duty status without pay where the allegation involves:

1. Intoxication (use of drugs or alcohol)
2. Pilferage
3. Failure to observe safety rules and regulations
4. Cases where retaining the employee on-duty may result in damage to USPS property, or loss of funds
5. Cases where the employee may be injurious to self or others.

An employee must be placed on administrative leave with pay where the allegation is, but not limited to:

1. A proposed removal has been issued
2. Pending fitness-for-duty examination to determine physical or mental ability to perform assigned duties
3. Insubordination
4. Pending special investigation.

Although the Board does not arbitrate disputes such as this, where the Respondent has not followed its own guidelines, such is evidence that the purpose for putting Williamson on leave without pay was in retaliation for her having engaged in union and other protected activity. Certainly the incident merited an investigation. Under the Respondent's guidelines, it did not merit leave without pay.

Finally, Feno admitted he neither followed the guidelines nor did he talk to Reilly or Williamson before placing Williamson on leave without pay. Feno asked Williamson about matters well beyond the incident in question involving her activity as a steward and in recommending her termination for "creating a hostile work environment" Feno admitted he held her accountable for past actions of others.

Williamson was on leave without pay from February 7 to March 20, during which time an investigation of the pushing incident and of Williamson's other activity was conducted. Such resulted in a suspension from April 3 through 14, following a recommendation by Feno and Gomez that she be discharged.

Although there is clear animosity toward Williamson on the part of Gomez and Feno, and Feno's interrogatories to Williamson clearly go beyond matters relevant to the pushing incident, I cannot conclude that the ultimate 2-week suspension by upper management was unreasonable or unjustified, given the Respondent's policy of zero tolerance on workplace threats and violence.

I conclude that absent animus toward Williamson for her protected activity, Feno would not have placed her on unpaid administrative leave[1] nor would Feno have proposed termination concurred in by Gomez; but the Respondent would have given her the 2-week suspension. See *Wright Line*, 251 NLRB 1983 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Accordingly, I conclude that by placing Williamson on "emergency off-duty" status, the Respondent violated Sections 8(a)(3) and (4) of the Act, but the suspension from April 3 through 14, 2000, was not violative of the Act.

## REMEDY

Having concluded that the Respondent has committed certain unfair labor practices, I shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, including making Patricia A. Williamson whole for any loss of wages and other benefits she may have suffered as a result of the discrimination against her with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]

[1] The General Counsel's contention of disparate treatment I find unpersuasive. An incident involving Ken Hybarger in early 1998 resulting in an emergency off-duty status without pay and a 62-day suspension, on this record, does not appear sufficiently more serious to conclude disparate treatment of Williamson because of her status as the union steward. Bruce Harvell was off for 7 days under sec. 16.7 and his 7-day suspension reduced to 3. The limited facts concerning this incident do not suggest disparate treatment of Williamson.